



REFERENCE GUIDE

PT-10

Prepared: January 20, 1995, by the Pay Team

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Basic Features of

Availability Pay

1. Established under Section 633 of the Treasury, Postal Service and General Government Appropriations Act for FY 1995 (P.L. 103-329, September 30, 1994). Interim regulations are under 5 CFR 550.181 through 550.187.
2. Effective October 30, 1994.
3. Covers Criminal Investigators GS 1811 and 1812 who meet the definition of “law enforcement officer” in 5 U.S.C. 5541(3)--not SES. (See 5 CFR 550.103(u).)
4. Provides for a premium of 25% of basic pay (including locality pay) for criminal investigators to be available for unscheduled duty for a minimum of at least 2 hours on each regular work day. (See 5 CFR 550.185(a).)
5. Replaces administratively uncontrollable overtime (AUO) for criminal investigators. (See 5 CFR 550.186(a).)
6. Availability pay is compensation for all irregular and occasional overtime and first 2 hours of any regularly scheduled overtime on an investigator’s regular workday. (See 5 CFR 550.111(a) and 550.186(a). Like AUO, availability pay is not considered compensation for other premiums--Sunday, holiday, night differential, etc.)
7. Criminal investigators are entitled to availability pay. Agencies or components must ensure that an investigator is required to be available (generally and reasonably accessible) a sufficient number of unscheduled hours of duty to allow the investigator to meet the minimum requirement. Three conditions under which a criminal investigator may not be entitled to availability pay: (See 5 CFR 550.182(c).)
 - a. the investigator voluntarily “opts-out” and requests not to be assigned to be available to perform unscheduled duty because of a family or personal hardship (See 5 CFR 550.182(e).);

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- b. the investigator does not in fact perform a sufficient amount of unscheduled duty to meet minimum requirement even though the supervisor and the investigator have certified that he or she is expected to meet the substantial hours requirement for entitlement to availability pay. (An involuntary suspension of availability pay as a result of a denial or cancellation of an availability certification is an adverse action under 5 U.S.C. 7512(4) and 5 CFR part 752. See 5 CFR 550.182(f)(1).); and
- c. the investigator is unable to perform unscheduled duty for an extended period due to a physical or health condition. (See 5 CFR 550.182(f)(2).)

8. Supervisors and investigators must certify that a criminal investigator is/will be expected to meet the substantial hours requirement for availability pay during the upcoming 1-year period. (See 5 CFR 550.184.)

9. To determine whether the investigator has performed the minimum amount of unscheduled duty, divide the total unscheduled duty hours performed by the investigator by the investigator's regular workdays. (See 5 CFR 550.183.)

regular workday means a day during the basic work week when the investigator works at least 4 hours, excluding overtime compensated under 5 U.S.C. 5542 and 550.111, unscheduled duty, training, travel, approved leave, excused absence, and holidays.

total unscheduled duty means all the unscheduled hours the investigator is required to be available on a regular work day and the hours of unscheduled duty the investigator actually works on a day that is not a regular work day.

10. Availability pay is paid during periods of work, training, approved leave, holidays, travel, and excused absence for relocation. Agencies or components may pay availability pay during initial periods of training, i.e., training provided by the agency to "law enforcement officer interns" before they are expected to perform the duties of law enforcement officers. (See 5 CFR 550.185 (b), (c), (d), and (e).)

11. Availability pay is considered basic pay for advances in pay, severance pay, worker's compensation, retirement, TSP., life insurance, and lump-sum payments for annual leave. (See 5 CFR 550.186 (b), and (c).)

12. Criminal investigators who receive availability pay are not covered by the FLSA and minimum wage provisions. (See 5 CFR 550.186 (d).)

13. Agencies or components may delay implementation of availability pay for criminal investigators in inspectors general offices until September 30, 1995. At that time availability pay must be implemented under OPM regulations. In the meantime, the AUO received by criminal investigators in inspectors general offices may not be reduced. The decision when availability

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pay will be implemented, within the above time frame, is at the discretion of the agency and not that of the investigators. (See 5 CFR 550.187(b).)

NOTE : We have requested that OPM be asked to clarify how an agency determines the appropriate length of an “extended period” under 5 CFR 550.182(f)(2) for the purposes of suspending availability pay. Under the Family and Medical Leave Act, an employee is able to be absent from work (including absence in a paid leave status) for extended periods without loss of benefits or other entitlements. If an employee invokes a family or personal medical emergency, under 550.183, the time spent on approved leave (including leave without pay if such is approved) cannot be used to determine whether the employee meets the substantial hours requirement and, therefore, would have no effect on the employee’s ability to comply with the annual certification requirement under 550.184.